

STATE OF MICHIGAN
COURT OF APPEALS

KIRK LEAPHART,

Plaintiff-Appellant,

v

BOTSFORD COLLISION & SERVICE, INC.,

Defendant-Appellee,

and

HASSAN ALTAI,

Defendant.

UNPUBLISHED

April 11, 2006

No. 258697

Wayne Circuit Court

LC No. 03-324658-CZ

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order denying his motion for attorney fees and costs. We affirm.

Following a bench trial, the trial court determined that defendant Botsford Collision & Service, Inc., violated the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.*, and awarded plaintiff damages of \$500. The court entered a judgment for \$500 on July 26, 2004. The court subsequently granted defendant's motion for case evaluation sanctions pursuant to MCR 2.403, although the court awarded a lesser amount than requested by defendant. On August 17, 2004, the court entered an amended judgment awarding defendant \$1,500 in costs and attorney fees. The judgment further ordered that "the Judgment due Plaintiff, entered July 26, 2004, be satisfied by this Judgment, leaving a balance owed Defendant of [\$980.48]."¹ Plaintiff filed postjudgment motions arguing that the adjusted verdict for purposes of MCR 2.403 was actually more favorable to him and, therefore, defendant was not entitled to case evaluation

¹ The basis for the calculation that resulted in this amount is not clear from the record, but plaintiff does not contest this calculation.

sanctions. The court rejected plaintiff's arguments. On appeal, plaintiff contends that the trial court erred in its application of MCR 2.403.

A trial court's decision whether to grant case evaluation sanctions under MCR 2.403(O) and the interpretation and application of court rules present questions of law, which this Court reviews de novo. *Campbell v Sullins*, 257 Mich App 179, 197-198; 667 NW2d 887 (2003).

Plaintiff and defendant both rejected the case evaluation of \$800 in favor of plaintiff. Pursuant to MCR 2.403(O)(1), in that situation, "a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation." MCR 2.403(O)(3) explains the adjustments necessary to determine whether a verdict is more favorable to a party:

For the purpose of subrule (O)(1), a verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to the date of the case evaluation, and, if applicable, by making the adjustment of future damages as provided by MCL 600.6306. After this adjustment, the verdict is considered more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation. If the evaluation was zero, a verdict finding that a defendant is not liable to the plaintiff shall be deemed more favorable to the defendant.

As explained in *Dessart v Burak*, 470 Mich 37, 42-43; 678 NW2d 615 (2004), the entire phrase "assessable costs and interest" is modified by the phrase "from the filing of the complaint to the date of the case evaluation." Therefore, the only assessable costs considered for purposes of this adjustment are those incurred between the filing of the complaint and the date of the case evaluation. *Id.* at 42.

Although plaintiff argues that the trial court refused to adjust the verdict in accordance with *Dessart*, *supra*, plaintiff's motions indicate that the costs for which he sought an adjustment included statutory witness fees, MCL 600.2552(1), and \$150 for trial costs pursuant to MCL 600.2441(2)(c). Because these costs were not incurred between the filing of the complaint and the date of the case evaluation, they are not properly considered in adjusting the verdict under MCR 2.403(O)(3).

Plaintiff also contends that the trial court refused to adjust the verdict for relative fault pursuant to MCR 2.403(O)(10), which states that, "[i]n an action filed on or after March 28, 1996, for the purpose of subrule (O)(1), a verdict awarding damages for personal injury, property damage, or wrongful death shall be adjusted for relative fault as provided by MCL 600.6304." Plaintiff argues that two individual owners of defendant were responsible for the MCPA violations and, therefore, this subrule required the court to add additional amounts to the \$500 damage award to reflect those individuals' relative fault.

Plaintiff's argument is flawed in two critical respects. First, this case did not involve a verdict awarding damages "for personal injury, property damage or wrongful death." MCR 2.403(O)(10). Second, the adjustment for relative fault is an allocation of the amount of the verdict between responsible parties, not an increase to the verdict, as plaintiff appears to believe.

Finally, plaintiff claims that the trial court's decision to award case evaluation sanctions to defendant is contrary to this Court's decision in *Ayre v Outlaw Decoys, Inc*, 256 Mich App 517; 664 NW2d 263 (2003). In that case, this Court analyzed the extent to which, pursuant to MCR 2.403, a rejecting plaintiff in a multi-plaintiff action is liable for attorney fees incurred by a defendant in defending theories and damage claims of a coplaintiff. Although the present case did not involve multiple plaintiffs, plaintiff apparently believes that *Ayre* establishes that a plaintiff is only responsible for attorney fees incurred by the defense in disproving that plaintiff's theory of liability. From this, plaintiff apparently reasons that if a plaintiff "disproves" a defense, then the plaintiff will not be responsible for the defendant's attorney fees.

Plaintiff's proposed extension of the reasoning of *Ayre* contradicts MCR 2.403. According to plaintiff's view, a rejecting party may not recover case evaluation sanctions if the verdict at trial is in favor of the opposing party. But pursuant to MCR 2.403(O), a rejecting party that loses at trial may recover case evaluation sanctions if the verdict, as adjusted, is more favorable to that party than the case evaluation. Contrary to plaintiff's understanding of *Ayre*, defendant's ability to recover case evaluation sanctions is not barred by the fact that the court's verdict was in favor of plaintiff.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra